

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4038 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

A M C

Versus

A'BAD MUNI.KAMDAR UNION

Appearance:

MR SHAILESH BRAHMBHATT for MR BP TANNA for Petitioner
MR CHETAN PANDYA for MR SV RAJU for Respondent No. 1

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 01/05/98

ORAL JUDGEMENT

This petition is preferred by the Ahmedabad Municipal Corporation against the judgment and award of the Industrial Tribunal passed in Reference (IT) No. 35 of 1986 on 12th March, 1987.

2. It appears that the workman Kanaiyalal R. Nayak was posted as Nakedar on the Naranpura Octroi Naka. On

27th October 1987 at around 2.15 p.m., a vehicle passed through the said Naka without paying the octroi for the goods carried in it. It was alleged that the workman permitted the vehicle to pass without paying octroi and accepted illegal gratification of Rs. 30/- for the same. In the course of disciplinary proceedings, it was established that the vehicle did pass the said Naka without paying the octroi. However, it was not proved that the workman had accepted illegal gratification of Rs.30/- as alleged. Keeping in view the guilt established against the workman, penalty of stoppage of two increments without future effect was imposed upon the workman. Further, in view of the imputation of charge made against the workman, he was suspended from service on 27th August, 1983 and was kept under suspension till 16th July, 1984. During this period, the workman received subsistence allowance in accordance with the relevant rules. On 25th November, 1984, the Corporation made an order treating the period for which the workman was placed under suspension as such.

3. Feeling aggrieved, the union raised industrial dispute in respect of the penalty imposed upon the workman as well as his continuous suspension for nearly 11 months. The disputes were referred to the Industrial Tribunal. The dispute in respect of continuous suspension of the workman was numbered as Reference (IT) No. 35/86 and the dispute in respect of penalty was numbered as Reference (IT) No. 102/86. Both the References were decided together by the learned Tribunal. Keeping in view the guilt established against the workman, the learned Tribunal held that the imposition of penalty of stoppage of one increment for one year should be adequate and substituted punishment imposed by the petitioner-Corporation accordingly. It may be noted that this petition is preferred against the award passed in Reference (IT) No. 35/86 alone. In my view, therefore, substitution of penalty imposed upon the workman by the tribunal has become final and is not open to challenge now by oral arguments.

4. As far as the dispute in respect of continuous suspension of the workman is concerned, the learned Tribunal has held that the incident occurred on 9th August, 1983 and the workman was placed under suspension on 27th August, 1983. Disciplinary proceedings were completed and the inquiry officer submitted his report on 24th April, 1984 and the order of penalty was made on 27th October, 1984. However, the workman was reinstated in service on 16th July, 1984. The learned Tribunal has held that;

"such inquiries should be completed and orders passed within a period of three months. "

The Tribunal, therefore, observed that the workman's suspension beyond three months was not justified and should be treated as period spent on duty. The tribunal, therefore, ordered that the workman concerned shall be treated on duty for the period beyond three months and be paid full pay and allowances for the period of suspension beyond three months.

5. Mr. Brahmbhatt, the learned advocate appearing for the petitioner Corporation submitted that there is no statutory provision that the disciplinary action should be completed within a period of three months. He has further submitted that there cannot be hard and fast rules regarding completion of a disciplinary proceedings. Without recording finding in respect of the cause of delay, if any, in completion of the disciplinary proceedings, the tribunal could not have ordered to treat the period of suspension as a period spent on duty. In my view, Mr. Brahmbhatt is right. Disciplinary action has been initiated by issuing chargesheet on 27th October, 1983 and the inquiry report was submitted on 24th April, 1984. Consequential order of penalty was passed on 29th October, 1984. However, even before the order of penalty was made on 29th October, 1984, suspension of the workman was revoked and he was reinstated in service. The learned Tribunal has not recorded any finding in respect of cause of delay. There is no material on record to come to the conclusion that the delay was caused on account of lethargy on the part of the petitioner Corporation. On the contrary, after submission of the report by the Inquiry Officer, on 24th April, 1984, the order of suspension was revoked on 16th July, 1984 without waiting for formal order of punishment which was made on 29th October, 1984. It does not appear that the disciplinary proceedings were protracted unnecessarily nor does it appear that the delay, if any, was caused on account of the Corporation. The workman having been found to be guilty, which finding has been sustained by the learned Tribunal, the tribunal ought not to have interfered with the order made in respect of period of suspension undergone by the workman. The order of the learned Tribunal passed in Reference (IT) No. 35/86 in respect of the period of suspension undergone by the workman is hereby quashed and set aside. Petition is accordingly allowed. Rule is made absolute with no order as to costs.

Vyas